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IN THE  
Supreme Court of the United States

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October Term, 1947.

No. 200

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OTTO H. KRUGER,

*Petitioner,*

*vs.*

NED WHITEHEAD, doing business under the fictitious name  
of WHITEHEAD & Co.,

*Respondent.*

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BRIEF IN OPPOSITION TO PETITIONER'S  
"MOTION TO DISPENSE WITH THE  
PRINTING OF RECORD."

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Respondent is uncertain respecting what is to be contained in the Transcript of Record upon which petitioner's Petition for Certiorari is to be determined in this Court.

Respondent has never been served with any notice of the filing of such petition and has been unable to determine precisely what has been filed in this Court in this case. The Transcript of Record upon which petitioner appealed from the District Court of the United States for the Southern District of California to the United States Circuit Court of Appeals for the Ninth Circuit was duly

printed and filed. Respondent has never been served with any copies of such record, containing the addition of a copy of any of the proceedings in the Court of Appeals in this case purported to have been taken. Respondent received from the Clerk of the Court of Appeals a copy of a letter dated June 28, 1947, addressed to this Court wherein it is stated that at petitioner's request he (the Clerk) is certifying to the Clerk of this Court "the original printed transcript of record in this cause with typewritten copy of proceedings had in this court; together with" ten therein identified items, some of which respondent is unable to identify and of some of which respondent has no copy.

On July 16, 1947, respondent received from petitioner a paper addressed "To Ned Whitehead, etc., and his counsel Lyon & Lyon:" together with a carbon copy of a "Motion to dispense with the printing of record." The motion asks "that the Petition may well be deemed to be true to evidence and facts"; without any verification. No ground is presented in such petition for dispensing with the printing of the record. There has been no compliance with either Rule 7 or Rule 26 of this Court requiring that (Rule 7) "(1) Every motion to the court shall be printed, and shall state clearly its object and the facts on which it is based."

## BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

### JURISDICTION.

It is respectfully submitted that this Court is without jurisdiction to grant in this case a Writ of Certiorari to review the judgment of the Circuit Court of Appeals.

R. S. U. S. §1008, 28 U. S. C. A. §350, as amended, provides that:

“No writ of certiorari intended to bring up any judgment \* \* \* before the Supreme Court for review shall be allowed or entertained unless application therefor be duly made within three months after the entry of such judgment or decree, \* \* \*.”

The petition herein was not filed within the time provided in this statute.

The final judgment of the District Court was filed and entered *November 15, 1944*. Petitioner's notice of appeal therefrom to the Court of Appeals was filed *February 9, 1945*. The judgment of the Circuit Court of Appeals for the Ninth Circuit (affirming the judgment of the District Court) was entered *February 6, 1946*, pursuant to the opinion of that court of that date. Under Rule 25 of that court its mandate was stayed for thirty days. No petition for rehearing having been filed by petitioner during such thirty-day period, a mandate pursuant to its judgment of affirmance was, on *March 8, 1946*, issued and sent to the District Court. On said date the usual formal notice to the attorneys of record for the parties was mailed by the clerk of the court. A “petition for rehearing” had, how-

ever, been mailed on *March 6, 1946*, by petitioner to the Court of Appeals. This petition was filed by petitioner, and not by counsel for petitioner. Respondent's attorneys have no knowledge when this petition for rehearing was received by the clerk of the Court of Appeals, but on *March 12, 1946*, received through the United States mails a copy of the paper in this case entitled "On Petition for Rehearing" in the Court of Appeals in which petitioner herein stated that his attorney, Mr. Huebner, had withdrawn from the case. Apparently upon receipt of this paper the Court of Appeals, sitting in Los Angeles, California, on Thursday, *March 14, 1946*, entered an order recalling its mandate of February 6, 1946, and granting petitioner herein leave to file a petition for rehearing in typewritten form. On *April 16, 1946*, petitioner's petition for rehearing was denied and notice thereof that day mailed to plaintiff-appellee and to petitioner herein. Upon *April 23, 1946*, the Court of Appeals issued its final mandate to the District Court. At no time thereafter was the mandate of the Court of Appeals recalled by that court. By such mandate its jurisdiction in the case had been terminated.

The petition for Writ of Certiorari herein was docketed in this Court July 9, 1947. This was a year and three months (lacking 14 days) after the final judgment of the Court of Appeals to review which Writ of Certiorari is now sought by petitioner herein.

Subsequent to the issuance of its final mandate in this case, the Court of Appeals never granted any leave to file a petition for review.

### THE MERITS.

Respondent filed in the United States District Court for the Southern District of California, Central Division, his complaint under the Declaratory Relief Act, Judicial Code sec. 274d, 28 U. S. C. A. §400, setting forth that an actual justicable controversy existed between plaintiff and defendant, petitioner herein, respecting the validity of the Ballou patent No. 2,088,567, and praying that the same be adjudged invalid and that plaintiff, respondent herein, "have such other, further or different relief as in equity and good conscience the Court may deem, under the circumstances, required." [R. 6.]\* Defendant, petitioner herein, answered, admitting plaintiff's assertion that such actual controversy existed between appellant and appellee [Ans., R. 13] and counterclaimed against plaintiff asserting the validity and infringement by appellant [R. 15], praying a final injunction against further infringement by plaintiff, etc. [R. 15]. Plaintiff in his answer to such counterclaim pleaded the invalidity of the patent [R. 16-18]. After full trial on the merits the District Court made findings of fact and conclusions of law [R. 22-24] and entered a final judgment wherein the court held Claims 1, 2, 4 and 5 of the patent in suit invalid and further provided a permanent injunction against defendant, petitioner herein, "from further representing to the trade, and particularly to plaintiff's customers, that identification cards manufactured by plaintiff are an infringement of or that any use of said trade or customers is an infringement of said Ballou Patent No. 2,088,567." [R. 25.] The opinion of the District Court is found at R. 20-21. The Court

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\*References to the printed Transcript of Record in the Court of Appeals are herein referred to as "R." followed by the page number.

of Appeals affirmed the findings of fact and conclusions of law of the District Court (153 F. (2d) 238-9). The patent in suit is reproduced at R. 44-47.

Respondent submits that this case presents no reason or ground for the grant of certiorari such as is required by Rule 38, subdivision 5, of this Court. No court has sustained any of the patent claims in suit; there is no conflict of decision with respect to the validity of such claims. This Court has uniformly indicated that it will not review concurrent findings of invalidity for want of invention in the absence of any conflicting decisions sustaining the validity of the claims. In affirming the decision of the trial court that the claims of the patent in suit did not require more than the exercise of the ordinary mechanical skill and common knowledge, the Court of Appeals applied the decision of this Court in *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U. S. 327, and the opinion of the Eighth Circuit Court of Appeals in *Measuregraph Co. v. Grand Rapids Show Case Co.*, 29 F. (2d) 263, 275.

The Ballou patent describes and claims a composite card. The purpose of this card is to serve as a means of identification. Such identification may be of a person or other object. Nothing in the patent claims limits the card to any novel thing which identifies a human being from any other animal or thing. To prevent a' teration the identification card proper is enclosed within and united with a transparent cover. Such cover is composed of a material that can be removed by a solvent. The printing on the card is in ink or in coloring matter that will be destroyed or defaced by the action of the solvent in removing the cover [Ballou Patent, R. 45, p. 1, col. 1, lines 45-55].



The patent describes the so-called "identification card" as consisting of a transparent cover within which a card is enclosed, this card being imprinted with, or otherwise carrying, what is termed in the patent "distinguishing matter." The patent does not disclose any novel kind of card, either with respect to material, shape or construction, nor any novel distinguishing matter serving identification purposes. The sole claim of invention is the imprinting of the distinguishing matter (of whatever character) upon the enclosed card in an ink or coloring matter which dissolves when the dissolving solvent of the transparent cover is applied thereto. [Cf. Ballou Patent, R. 45, p. 1, col. 1, lines 47-55.]

"\* \* \* the point is that the identification matter will always be made of a medium dissolvable by the same solvent by which the cover can be dissolved, so that no identification matter will be left on any attempt of dissolving the cover for the sake of obtaining the identification for misrepresentation or alteration." [*Id.*, col. 2, lines 4-10.]

Ballou and petitioner admitted that there was nothing novel in this identification card except the imprinting or forming of the so-called distinguishing matter of an ink or coloring which would dissolve by the same solvent that would dissolve the cover, and petitioner is estopped to contend otherwise. [Cf. rejected and cancelled Application Claim 6, R. 52; testimony of appellant, R. 63.]

The card defined by Claims 1, 2, 4 and 5 of the Ballou patent differs from this admittedly old card of cancelled Application Claim 6 *solely* in printing or forming of the so-called "distinguishing matter" of a material "made to dissolve by the same solvent" that will dissolve the cover.

(*I. T. S. Rubber Co. v. Essex Rubber Co.*, 272 U. S. 429, at 443, 444; *Hubbell v. United States*, 179 U. S. 77; *Brill v. St. Louis Car Co.*, 90 Fed. 666 (C. C. A. 8).)

The Goodsell-Maynard patent 1,071,226 [Plaintiff's Exhibit 3, R. 138-40] discloses an identification card enclosed in a celluloid cover. This cover is attached to the card in the same manner as the cover in the Ballou patent [*Cf.* R. 140, Goodsell-Maynard Patent, p. 2, lines 5-45; *id.* 139, lines 20-26].

The Goodsell-Maynard patent does not disclose what kind of ink or coloring matter is or may be used for printing upon the card or identifying device 4.

In deciding this case the district judge accepted the testimony of petitioner's expert Horwitz, who testified that manufacture of an ink that would *not* bleed has been and still is a problem [R. 105].

"Q. Then there is no ink which could be applied, even today, to cards in these cellulose acetate covers, under heat and pressure, which, upon dissolving the cellulose acetate covers, could be re-coated, without destruction of the printed matter. A. Not without so defacing it that it would be easily recognizable as having been tampered with." [R. 106.]

\* \* \* \* \*

"The Court: In other words, it has been generally known that there was a solvent that would cut printed matter? A. That is right.

The Court: It is also well known, isn't it, that there is a solvent that will dissolve celluloid material? A. Yes. That also goes back many, many years.

The Court: To a man skilled in the profession there is nothing about the ink combinations here that is unusual? A. No. It hasn't been unusual for the

past 20 years anyway, maybe longer than that. My recollection goes back to the years I was working in the press room, when they were making identification tabs. At the old John C. Moore Corporation in New York City, we were playing around in those days with the fusing together of two parts of celluloid, having a gummed flag of fabric attached to it. That goes back to 1910 and 1911.

The Court: Has there ever been a time when you have before been confronted with the problem of working out an identification card? A. No, sir.

The Court: Is that the first time? A. This is the first time, to my knowledge, and, if I may elaborate on that a little bit, I have covered the graphic arts field for 40 years now, *and there has never been a time or an industry other than the one created by the present emergency that made that kind of thing necessary and essential. In this war they have found this kind of thing completely essential and necessary in the creation of small industries, this identification proposition.*" [R. 102, 103; emphasis supplied.]

\* \* \* \* \*

"A. \* \* \* No printing ink has yet been made that will withstand the action of acetate solvent. All vehicles that are used in printing ink will break down under the action of any acetate solvent." [R. 95.]

\* \* \* \* \*

"The Court: I understand from your testimony that, generally speaking, any celluloid material that can be dissolved or that is susceptible of dissolving, the solvent would also affect the ink? A. The same solvent would affect the ink, yes, and I think the word 'affect' is used advisedly there, because it would affect it in varying degrees. In some instances it will take

it out completely, and in others it will take it out in more modified ways and in other cases it would destroy the fabric of that ink. The ink is no longer the same after it has been hit by that solvent.

The Court: I think that is all.

*Redirect Examination.*

Q. By Mr. Franklin: You say that different solvents affect the ink to different degrees. That being the case, would you say that all solvents that would dissolve cellulose acetate would be sufficient to dissolve the ink in such a way that it would show up on the card to show that it had been tampered with? A. I would say that any solvent that will take that cellulose acetate off would affect the printed matter there to a degree that it would show tampering." [R. 110.]

The problem in ink manufacture was not to produce an ink which would not bleed or run or be defaced in a cellulose solvent. The difficulty with the earlier inks was this bleeding and dissolving. Petitioner's expert, Horwitz, made this clear:

"Q. Is it not true that for 20 odd years or much longer that ink problems have had to do with producing a fixed ink? A. Will you explain what you mean by a 'fixed ink'?

Q. An ink that would not dissolve, bleed or leach in alcohol esters. A. It is still a problem.

Q. You haven't succeeded ever in manufacturing a fixed ink? A. Not for the printing and lithographic arts, industries, no." [R. 104.]

The Walsh-Caprio Patent 2,079,641 [R. 154-6] discloses a process of making an integral structure of manufacture comprising "a plurality of sheets at least one of which is

of a cellulose acetate plastic, and at least one of which bears bleeding colors, said sheets joined by means of a sheet of cellulose acetate plastic containing at least 60 parts plasticizer to 100 of cellulose acetate base between each pair of said first mentioned sheets" [Claim 4, R. 156].

The product produced by the Walsh-Caprio process results in the production of an article of manufacture substantially identical with the article defined by the Ballou patent claims. The application for this patent was filed January 11, 1930, almost four years prior to the filing, on October 22, 1934, of the application for the Ballou patent [Cf. certified copy Walsh-Caprio application, Pltfs. Ex. 8]. All that was set forth in such application was made a part of the prior knowledge by the filing of such application and is thereby proven to have been known prior to Ballou's alleged invention (*Alexander Milburn Co. v. Davis-Bournonville Co.*, 270 U. S. 390). This patent was not considered by the Patent Office in the negotiations for the grant of the Ballou patent and the usual presumption of validity of the Ballou patent is thereby overcome and the court called upon to determine the issue of invention as a matter of first impression (*Mettler v. Peabody*, 77 F. (2d) 56, 58 (C. C. A. 9)).

The Walsh-Caprio patent states that:

"An object of our invention therefore, is to provide a cement which will not cause blushing, bubbles, or pockets and will not cause colors to run or bleed" [R. 155, col. 1, lines 19-22].

The drawings show a print or card 1 "having a paper base" and "having an outer colored surface" [R. 155, col. 1, lines 44-47].

"It is assumed for the purposes of illustration that the color or colors of the print 1 have a tendency to run or bleed when the ordinary volatile liquid solvents or cements are used. To overcome this tendency of the colors to run or bleed, we use between sheet 4 and print 1, a cement 5 in sheet form comprising substantially non-volatile solvents for the cellulosic plastic, preferably combined with at least a small proportion of the particular cellulosic plastic. The presence of at least a small proportion of the cellulosic plastic is particularly preferred where the non-volatile solvents are of an oily nature, in order that the cement may be maintained in sheet or other solid form. The use of a proportion of the cellulosic plastic also aids in producing a final product which is substantially homogenous throughout, except for the print or its equivalent." [R. 155, col. 1, line 54, to col. 2, line 12.]

The patent contains complete formulae setting forth in detail the composition of the so-called thermoplastic cements. Formulae A and C refer to cellulose acetate and Formulae B and D refer to cellulose nitrate as the main ingredients, and the other chemicals in the formulae as plasticizers or thinners. "Cellulose acetate" and "cellulose nitrate" as well as celluloid are well known clear, plastic substances, all usable for covering the surface of an identification card. They have no visible physical differences. Either of these corresponds with exactitude to celluloid or the "different transparent materials" which may be used instead of celluloid as set forth as equivalents in the Ballou patent. Petitioner used cellulose acetate in covering his

cards. Further reference to the soluble or bleeding or smearing character of the color or ink is contained in this Walsh-Caprio disclosure [p. 2, col. 1, lines 21-28, R. 156] and it is to be noted that in the article, claims 3 and 4 [R. 156] which claim the composite sheet produced, reference is made to one of the sheets which bears bleeding colors. There is no substantial patentable difference between the Ballou identification card, as defined and disclosed in Ballou's patent claims, and the composite sheet or identification card produced in accordance with the Walsh-Caprio disclosure.

The fact that the print 1 of the drawing of the patent is a picture is wholly immaterial as to anticipation of the Ballou patent. Such illustration would be an identification means for identifying a person or property illustrated. Clearly, it would not amount to invention to substitute for this pictorial representation a man's name in printing or any other identifying matter. Respondent cannot stress too much the fact that the Ballou patent does not disclose or claim any particular identifying manner or means. The material consideration here is that in law the use of the card cannot form the basis for either patentable novelty or patentable invention *in the card itself*. It is not the use of the card that renders the card patentable, but it is the elements from which it is constructed. The Walsh-Caprio patent [Ex. 7] describes as well as claims the things which the Ballou patent claims. The only material difference between the patents to Walsh and Caprio and to Goodsell and Maynard [Ex. 3] is that Walsh and Caprio *recognize that inks will bleed* when subject to the solvents and plasticizers necessarily present in a cellulose cover, and that Walsh and Caprio disclose a cement between the cover and the card which will prevent the ink from bleeding



during the manufacture. The article produced by the Walsh-Caprio process corresponds precisely with the so-called "identification card" of the Ballou patent claims. "\* \* \* the color or colors of the print 1" are described as having "a tendency to run or bleed when the ordinary volatile liquid solvents or cement are used" [R. 155, col. 1, lines 54-57]. "The compositing operation is preferably carried on by first using heat and pressure in a press, or its equivalent, and then cooling without completely removing the pressure" [*id.*, col. 2, lines 19-22].

Four formulae are given of a thermoplastic cement which is termed as "plasticizer." If cellulose acetate is used as a solvent to dissolve or remove the cellulosic cover, such solvent being a solvent of both the plasticizer and the ink or coloring matter, the fact is established that "it would be easily recognizable as having been tampered with" (Horwitz testimony, *supra*, R. 106].

"If the evidence offered by the patent holder is to be accepted, we have no discovery and therefore no patent, while on the other hand, if plaintiff's testimony is to be accepted by the court, we have a problem stated without the solution. Under either viewpoint the patent is clearly invalid.

"In view of the presumption of validity, I am accepting the testimony of the patent holder's expert. The defendant patent holder by attempting to prove his patent complies with R. S. U. S. 4888 has convinced the court that his patent is not the result of inventive genius but at the most required only the work of one skilled in the art. As a matter of fact, I feel no discovery was made. The problem according to the defendant, was the finding of certain inks that would be dissolved or caused to bleed by the same



solvent that would dissolve the transparent covering. The solvents for the coverings were well known, and if, as a matter of fact, all inks would be substantially affected by such solvents, the problem of discovering the proper ink did not exist." [Opinion District Court, R. 21.]

The Court of Appeals also affirmed the findings of fact and conclusions of law of the District Court that the Ballou patent does not disclose or describe the invention as required by Rev. Stat. §4888 (35 U. S. C. §33, 35 U. S. C. A. §33) and is void for that reason.

No question of public importance is presented in the instant case. No principle or doctrine of law as to which there is conflict of decision is presented.

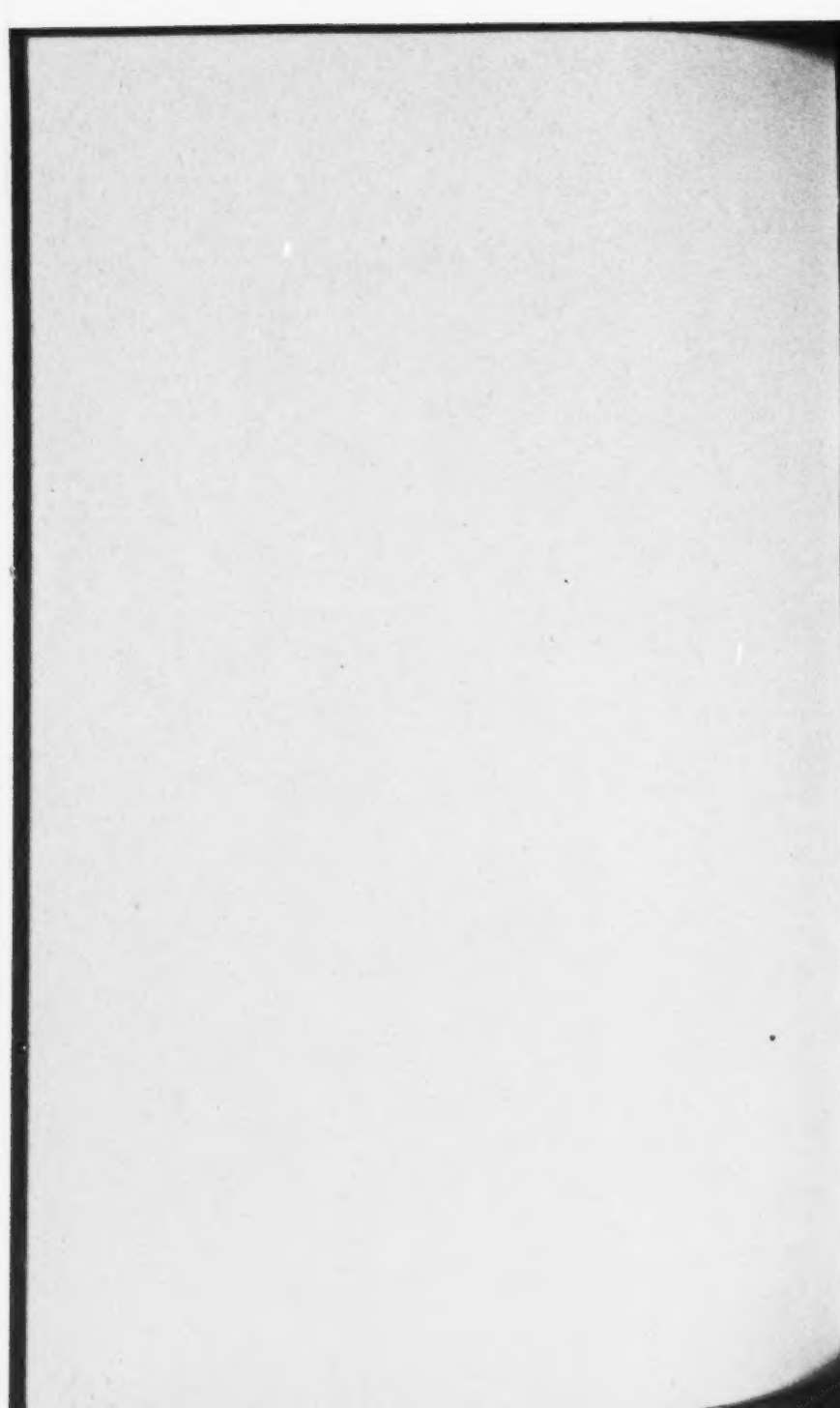
It is respectfully submitted that the petition herein should be denied.

Respectfully submitted,

FREDERICK S. LYON,

FREDERICK W. LYON,

*Attorneys for Respondent.*



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IN THE  
**Supreme Court**  
OF THE  
**United States**

OCTOBER TERM, 1947

No. 200

OTTO H. KRUGER,

*Petitioner,*

vs.

NED WHITEHEAD, doing business  
under the fictitious name of WHITE-  
HEAD & CO.,

*Respondent.*

**REFUTING LYONS' DARINGLY-UNTRUTHFUL  
BRIEF ON MY PETITION FOR CERTIORARI  
TO REVIEW.**

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To the Honorable, the Chief Justice, and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Otto H. Kruger, begs this Court's indulgence on a few more statements, to nail the Lyons by their own words from their brief just filed, 3 copies received 9/6/1947.

## TO OPPOSITION ON MOTION

The papers submitted with my motion will sufficiently refute all pretence of the Lyons as to what they know, and have, by way of service-notice attached to individual papers of record.

Besides, they make no effort at all, to name the items they pretend not to be able to identify, or of which they pretend not to have copies.

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## TO OPPOSITION ON PETITION

I beg pardon if this is a lengthy answer, only burdening the Court by Lyons' directly exposing their own untruth—

(untruth)—p. 3, lines 20/22:

“No petition for rehearing having been filed by petitioner during such thirty-day period”;—

self-contradicting last line, same page, and continuing p. 4:

“A ‘petition for rehearing’ had, however, been mailed on March 6, 1946, by petitioner”;—

which is very plainly two days before 30 days from Feb. 6, 1946.

Lyons' p. 4, lines 10/19, obviously resulting in mistakes between Courts; to make it one of the serious and pertinent grounds for this petition.

Lyons' p. 6, lines 7/16, adding more grounds—  
(untruth)—lines 7/8:

“no conflict of decision” (1);—

to appear contrary to facts, when compared with pp.  
13, 17 and other places of my petition.

(untruth)—lines 22/23:

“person or other object”;—

which can only be deemed extremely contra the very  
plain and definite preamble of Ballou patent.

(45 of printed transcript).

(untruth)—p. 7, lines 5/8:

“The patent does not disclose any novel kind of  
card . . . or construction . . . novel distin-  
guishing matter . . . ”;—

similar untruth p. 13, lines 18/20;—all contrary to  
facts, as set forth in my petition, pp. 15, 18, 19, 20, 21,  
24, 29, 30 and other places; the Lyons, evidently, at-  
tempting only further misleading without answering  
real structure of my petition.

(untruth)—p. 7, last two paragraphs, regarding  
claim 6. Quite apparently, they do not believe in their  
own argument of claim 6, or they would not have to  
stoop to so many other falsehoods, by which to attempt  
to bolster up their collapsing position.

Nobody, not even the Lyons, could possibly deny  
claim 1 to be the broadest claim in this case.

Then, how could it possibly be deemed the broadest claim to have become abandoned to the public by any discarding of the most-limited claim 6?

Particularly, when, at that very moment, claim 1 had been, and was, approved by the Appeal-Board.

Moreover, when any amending of claim 6 into allowable form, not only would have put more limitations into claim 6 but, would have duplicated already allowed features in previously allowed and remaining and issued other claims?!

In plain honesty, Ballou and/or Petitioner could not possibly be deemed to have admitted such Lyons-nonsense, neither directly, nor by inference.

The Appeal-Board's term "broad enough" should, quite unmistakably, more appropriately have been—

\* vague, or indefinite \*;

but positively—

. . . not broader than claim 1 . . .

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Lyons' brief, p. 8, last three paragraphs, only emphasizes Courts' mistakes, of having deemed—

"Distr. Ct.: gist of the patent is the discovery of a solvent" (p. 13, my pet.);

"C. C. A. 9: correctly states, such solvents are well known" (p. 12 & p. 4, line 6 of my petition);

"Distr. Ct.: The problem, according to the defend-



ant was the finding of certain inks" (my pet., p. 17);

and, thereby, emphasizing—

... CONFLICT IN COURT OPINIONS ... ;—

on which the decisions must appear to be based,  
lacking any other recorded interpretation.

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Lyons' brief, p. 9, lines 9/21, can only be deemed  
NEFARIOUS ABUSE OF COURT and expert.

It must be deemed that reciting Court's "understanding" as if with reference to the expert's statement of p. 95, lines 21/24, though with a lot of stars reprinted in Lyons' brief p. 9, lines 22/25;

any understanding should easily be extremely different if the connecting expert-statements had been given, here avoided by the Lyons, since the expert became more specific—

expert:—"vehicle would be affected, the carrier of the pigment" (95-25/26);

" "some of the pigments are resistant" (95-26);

" "leave the pigment on the surface" (95-last line);

" "might not be directly visible (96-12);

" "to the layman that wouldn't be so visible" (96-27);

" "wouldn't be perceptible to you" (97-28);—

to which the District Court, at last, gave up—

“Court: And the guard will not examine the ink with a magnifying glass, like you will, to see whether it has been altered, so it has to be something that is perceptible” (98-5/8);—

the expert having used his magnifying glass repeatedly right under the eyes of the Court over the top of the Bench, both trying to see things in samples passed back and forth between them, but even the expert, at times, could not see any affecting at points questioned by Court. (See page 97 of printed transcript, lines 6/14).

No honest person could possibly expect any expert to qualify and elucidate every answer; particularly, when Court showed inclination to interrupt and cut off, though the expert qualified his answer often enough, as in cross-examination by Lyons:

“Q. But any ink that was used up to today would bleed or run?

(expert)—“A. Not necessarily. I want to get this clear. I made a statement before, and I want to qualify the thing, if I may. You can absorb into the surface of the paper a sufficient degree of pigment so that the pigment remains after the vehicle has been washed out” (104-24/30);—

or, in another place—

“Q. It is true, isn't it, that any ink manufactured will be defaced, so that tampering with it would seem, when acetone or ketone are applied?”

(expert)—“A. No. You can make a non-soluble carbon, that will bond itself into the fibre of the paper and pigment. If I could elucidate a little bit, you might be able to wash this acetate off, and you would still have the residue of ink on there that might not have been badly defaced” (105-18/26).

The expert had also made his position clear previously about the bonding and SPLITTING—

(expert)—“should also bond to the acetate coating to such an extent that when the coating is split apart it would split the sheet” (93-4/6).

In the printed transcript, beginning with the last two paragraphs of page 107, all through page 108, and up to when the Lyons desperately, or horrifiedly, cried—

“That is all” (109-25);—

it was established that there were many so-called stable inks, of which the expert recalled and named a great number, after a chance to think; such stable inks to act like the carbon-black named previously, different from any bleeding-inks; which only emphasizes so much more that the Court-decisions were based on—  
CONFLICTS—

“C. C. A. 9: all inks are soluble and bleed”  
(my pet., p. 4, lines 22/23).

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Referring to "problem"-understanding of the Trial-Court; the Lyons are rather foolish to use it, in their page 9, line 10, since it only emphasizes invention in Ballou's patent, which had been filed and issued several years before there was any war, the Court having previously acknowledged—

"Court: As I understand, this witness didn't work out the formula" (93-end).

It must be recalled, moreover, that the expert distinctly and definitely, not only did not have anything to do with any sort of working out any problem on identification-cards; but plainly testified that he knew nothing or very little about the Ballou-patent—

(expert)—"The only thing I know about it, I just briefly glanced at some of those things in the attorney's office yesterday afternoon" (109-27/29);—

" "I didn't make any study of it" (109-29);

" "I know very little about what is involved here" (110-2/3);—

and it was the same with other matters, when the Lyons attempted to drag in their humbug page 733 on plastics—

(expert)—"In the first place, I am not a specialist on plastics, and I would be very foolish to take issue with national authorities" (106-16/18);

and a similar thing when the Lyons tried to drag in paper—

(expert)—“I wouldn’t want to go into that, because I am not sufficiently familiar with the fibre structure of paper” (101-8/10).

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The expert was introduced by my side only, to establish the known art of coloring, to which class ink may also be included, and for no other purpose.

It was the opposition, who attempted to confuse the issue with their ink, solvent, paper, plastics and even formulas for plastics, and ingredients, all of which had nothing to do with the true issue, which was in the structure, as set forth in my petition, such as “compound” pp. 15, 18, 19, 20, 21, 24, 29, 30 and other places.

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Pages 10 to 15 of the Lyons’ brief is only a most hysteric attempt to confuse the issue similarly as explained above.

They have even the shamelessness, or is it brazenness? — avoiding answering serious charges made against their integrity, for investigation in the interest of the Public and professional standards.

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They tell us long stories that the use of a thing is not patentable but—the structure; but they make no effort to answer reference to structure, set forth in so many places of the petition here named.

On the other hand, they attempt to prove their point of anticipation in Walsh-Caprio and Goodsell-Maynard by the mere use of solvent, disregarding that neither of those patents have any structure that could possibly be made into any sort of anticipating structure by any stretch of imagination.

They have made no effort to prove in any way or manner that the cement of Walsh ever would allow any solvent to get through to their color-scheme for any bleeding, the thing having been described as bleed-preventing, regardless of not having any structure for any sort of identification.

Walsh-Caprio would not think of any forger wanting to destroy a piece of art. (It would not sell).

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Lyons dug themselves in so deeply, to, eventually evidently, feel to have to keep on digging; not big enough to say, to have made mistakes, if they wanted to call it that which it evidently is not.

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## CONCLUSION

Believing that Lyons' evident-untruth makes their whole brief worthless, and, further answering on my part, only an undue burden on this Court;—

I respectfully submit that the previous judgments may be found to be based on similar misleading by such untrustworthy-counsel Lyon & Lyon, and that the Ballou-patent may be found to be valid and infringed, granting me costs and damages besides injunction and accounting against the fictitious Whitehead & Co. including Lyon & Lyon, who never made any effort to prove to have had any cause for suit, only using that fictitious set-up to draw big War-income out of profits that should honestly belong to others, who had offered the free use of the Ballou-patent to our Government for the protection of our Servicemen and our People, as set forth in my exhibits in my pre-trial brief—Y-1-2-3-4-5. T and V-1-2 may also be interesting as to giving information all over the United States, all Vehicle License Offices, etc.; also Kirk Mfg. Co., October, 1935.

Respectfully submitted,

OTTO H. KRUGER

Otto H. Kruger, Petitioner.

1803 Virginia Road,  
San Marino 9, Calif.,  
September 12, 1947.

STATE OF CALIFORNIA,  
County of Los Angeles.—SS.

Otto H. Kruger, being first duly sworn, deposes and says, that he is the petitioner named in the foregoing "Refuting Lyons' daringly-untruthful Brief"; that he has read and knows the contents thereof; and that the same is true of his own knowledge except as to the matters which are therein stated upon his information or belief, and as to those matters, that he believes them to be true.

OTTO H. KRUGER

Otto H. Kruger.

Subscribed and sworn to before me  
this 12th day of September 1947.

JESSIE M. WILLIAMS  
Notary Public in and for the County (SEAL)  
of Los Angeles, State of California.

My commission expires October 18, 1950.